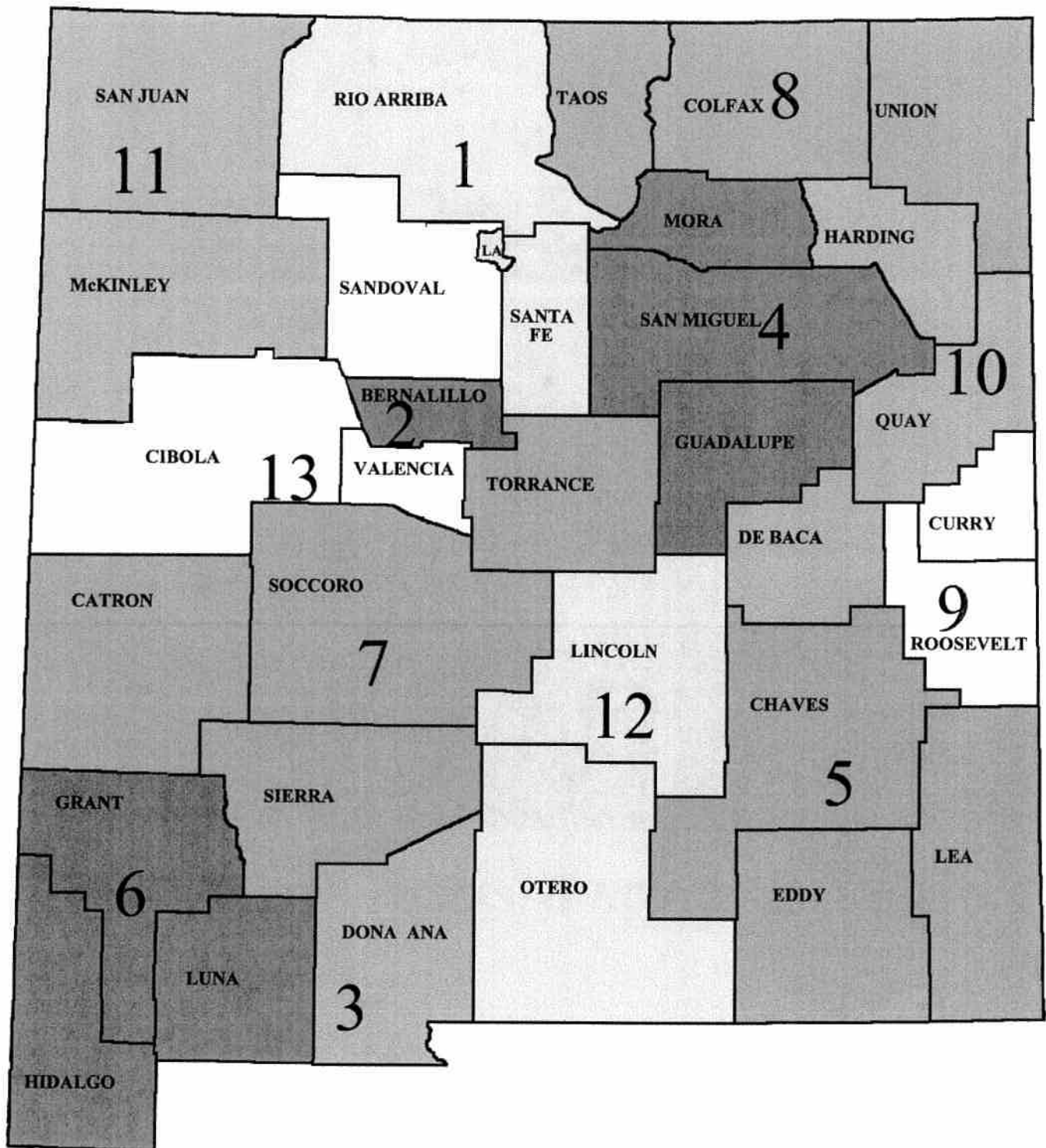




New Mexico **J**udiciary

**Presentation to the
Government Restructuring Task Force
August 19, 2010**

New Mexico Judicial Districts





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Chama, Questa, Pojoaque,
Thoreau, Estancia, Quemado,
Hatch, Anthony, Jal

MEMORANDUM

TO: Government Restructuring Task Force
FROM: Artie Pepin, Director, Administrative Office of the Courts
DATE: August 19, 2010
RE: Government Restructuring Task Force Request – Judicial Branch Efficiency

The Judicial Branch agrees fully with the goals of the Government Restructuring Task Force. Following the adoption, in 2008 (with a revision in October 2009), of the Supreme Court Long-Term Strategic Plan, the Judicial Branch has for several years been focused on creative, innovative ideas to streamline the delivery of essential services, provide meaningful access to justice for all who come to our courts, and eliminate inefficiencies in the Judicial Branch.

Entrusted by the New Mexico Constitution to carry out the fundamental responsibility of resolving disputes, the Judicial Branch has broadened the scope of its mission in an effort to redress the causes of disputes and provide solutions that prevent future disputes. Today, the Judicial Branch is inadequately staffed and inadequately funded to accomplish all of the efforts it has undertaken. Fiscal reality suggests it may be time to retreat from some of these efforts. The Judicial Branch shall not do so. Innovative efforts, such as problem-solving courts, pro se clinics to assist the self-represented, electronic filing and document management, mediation programs, and the myriad of other efforts to modernize and improve our justice system, will continue. To accomplish this with shrinking resources, the Judicial Branch has underway a number of efforts to increase efficiency in all courts. Those efforts are briefly summarized later in this document, in response to the request of the Government Restructuring Task Force to describe (1) what reductions have been made to budgets and the impact of those reductions on delivery of services and (2) what options have been explored to be more efficient and cost-effective.

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BUDGET CUTS AND THE IMPACT OF CUTS ON THE JUDICIAL BRANCH

With the recent 3.2% reduction in court budgets, the Judicial Branch faces furloughs for 67% of our employees and court closings statewide. In most courts, 90% or more of the budget is dedicated to paying employees and judges. Spending has been reduced in every possible category prior to implementation of employee furloughs and court closings.

- Reductions statewide from \$153 million to \$137 million since start of FY09, a reduction of 10.45%, **plus** “sweeps” of \$2,000,000 from court fund balances;
- Statewide vacancy of authorized FTEs 11.5% as of July 1, 2010;
- Most courts have reduced public hours in order to attempt to keep pace with rising case filings while maintaining a vacancy rate of more than 10%;
- Expected loss of more than 36,000 hours of productive time during FY11, when employees are furloughed, as required by the FY11 3.2% cut; and
- The Judicial Branch has borrowed more than \$1,250,000 since the start of Fiscal Year 2009 to make jury payments. In Fiscal Year 2010, the Second Judicial District borrowed \$300,000 to keep its furlough of employees to a minimum and keep the court open to the public 30 hours per week (reduced from 45 hours in Fiscal Year 2009).

A professional, independent study shows the district and metropolitan courts have only 75% of the judges needed to adjudicate the existing case filings in those courts. One magistrate court with five magistrates needs more than nine magistrates. Courts do not have enough judges to adjudicate the existing cases. A separate professional study shows authorized staff FTEs are similarly inadequate to process the existing caseloads. Since FY09 case filings statewide have increased more than 7%.

In addition to reducing court hours and functioning with a vacancy rate of more than 10% (from an authorized staffing level that is already only 75% of what is needed), the Judicial Branch has undertaken measures great and small to reduce or eliminate spending at all levels. Despite these actions, the 3.2% reduction in FY11 still requires furloughs of 67% of judicial employees. A few of those measures are summarized in the chart on the following pages.

Actions Taken to Survive GF Reductions Imposed for FY 10 and FY 11

- 1** Receipt of Board of Finance loans to reduce furlough of employees in one court and to fund jury and interpreter payments (these payments are required by the NM Constitution and statutory requirements).
- 2** Elimination or delay of maintenance contracts for most court-owned equipment and facilities, creating the risk of expensive repairs or replacements not covered by any maintenance contract.
- 3** Severe limitation on in-state travel and virtual elimination of out-of-state travel.
- 4** Severe limitations on purchases of supplies.
- 5** Elimination of projects to microfilm court records so existing paper records can be destroyed, requiring storage of bulky paper files.
- 6** Requirement that judges and attorneys in the Supreme Court and other courts pay their own bar dues and costs of continuing legal education courses that are mandatory to maintain professional license; elimination of dry cleaning of robes in most courts.
- 7** Holding vacant employee positions statewide exceeding 10% overall (including both general fund and other state fund positions); same positions held vacant a year or more.
- 8** Reduction of most drug courts and other problem-solving courts statewide, with suspension of the Judiciary's Drug Court Five-Year Plan by order of the Supreme Court – this has eliminated some programs and reduced enrollments in extremely successful drug courts by more than one-third statewide, despite the infusion of \$1,000,000 in Liquor Excise Tax Funds in FY11.
- 9** Layoff of a domestic violence hearing officer and several drug court employees.
- 10** Eliminated Domestic Violence Family Assessment and Intervention Resources Program in Albuquerque.
- 11** Reduction in services for CASA, safe exchanges and supervised visits, and mediation in abuse and neglect cases – reducing these services in children's cases throughout the state
- 12** Retained mileage reimbursement for official travel at \$.32 per mile instead of increasing to the I.R.S. rate for reimbursement authorized by Section 10-8-4, NMSA 1978; Supreme Court Justices and Court of Appeals Judges are not reimbursed for mileage, many judges and management staff statewide voluntarily forego mileage and travel reimbursement.
- 13** Charging statutorily authorized fees to problem-solving court clients.

Actions Taken to Survive GF Reductions Imposed for FY 10 and FY 11

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| 14 | Closing to the public of many courts throughout the state for up to 4 hours during normal business hours to permit reduced staff to attempt to catch up with case processing; public must conduct court business during the other days of the work week when the court is open. |
| 15 | Reduction of phone and facsimile lines in courts 10% to 20%. |
| 16 | Eliminating designation of pro tempore magistrate judge, requiring elected magistrates to travel to other courts, resulting in slower administration of dockets in the home and visited courts. |
| 17 | Courts' jury orientation process restructured to consolidate orientation with service, reducing travel and jury hourly costs. |
| 18 | Holding magistrate court staff vacancies open unless the court is staffed below 80% of staffing need; hold all magistrate court vacancies open at least 120 days. |
| 19 | Negotiated with magistrate court landlords to forego annual lease increases and, in many cases, to reduce lease payments in FY11 through FY14. Eliminated one magistrate court (Tatum); eliminated three magistrate circuit courts (Vaughn, Cimarron, San Jon). |
| 20 | Successfully sought enactment of fee increases to fund court automation projects, fund magistrate court operations, provide for judicial education, and pay jurors. |
| 21 | By Supreme court order, increased jury demand fees for litigants by 50%. |

As budget cuts resulted in the above impacts on courts statewide, the Judicial Branch recognized that a return to “business as usual,” as in a return to increased appropriations, might be so far into the future that planning for the next several years required greater efficiencies. As the following discussion shows, some planning for streamlining operations and improving efficiencies has occurred and some planning is ongoing.

EFFICIENCY IN THE JUDICIAL BRANCH, FY 2010-2013

Actions outlined on the next page, and discussed in the pages that follow, involve intelligent use of technology or reorganizing business practices to make the Judicial Branch more efficient. With these efforts, if courts do not reduce the number of employees, especially clerks who currently enter a high volume of data manually, they will re-purpose those employees to accomplish other tasks that provide greater court access to citizens and ensure speedy, accurate case processing. A number of projects would be substantially advanced with one-time funding, and those are noted (“One-Time Funding”). Some of these actions are underway and some are planned; they will in the next several years improve efficiency and reduce costs. This outline is followed by a description of each outlined subject.

Efficiency In The Judicial Branch, Fiscal Years 2011 – 2013

EXECUTIVE SUMMARY

<i>Action</i>	<i>Benefit/Efficiency</i>	<i>Funding, if any</i>
I. Implement the Odyssey Case Management System in All State Courts	A. Odyssey will make courts more efficient	
	B. Electronic citation for Magistrate Courts	One-time funding (amount unknown)
	C. Electronic filing for district courts	One-time funding \$500,000
	D. Appellate electronic case management	One-time funding \$100,000
II. Implement Electronic Payments By Credit Card And Direct Bank Transfer	Promotes payment of fines and fees; expect collections to increase significantly and reduction of warrants for failure to pay	
III. Judicial Video System Expansion Would Improve District Court Operations	Reduce travel and transportation costs and increase security in courts	Ongoing GF with high return on investment, \$200,000
IV. Additional Efficiency Measures Contemplated Or Underway In The Courts	A. Plea cutoff pilot project	
	B. Restructure penalty assessments; process all citations through the courts	Ongoing, NON-General Funds (Fee) With High Return On Investment (\$20 Fee In Traffic Citations)
	C. Re-evaluate Trial De Novo Process, Particularly For DWI And Domestic Violence Misdemeanors; Consider Appeal From Magistrate Court Record Proceedings	
	D. Study judicial structure and implement cost-savings recommendations	National Center for State Courts will conduct the study with funding from the State Justice Institute
	E. Coordinate PRC bondsmen data with court filings; re-examine bond practice	
	F. Implement criminal felony case settlement weeks	
	G. Appoint a pro tempore judge to immediately resolve probation violations	
	H. Expand use of digital recording of court proceedings in place of making a stenographic record of proceedings	
	I. Preserve Cost-saving Problem-Solving Courts	Ongoing GF with high return on investment (eliminate cuts/restore funding up to \$1,500,000)
	J. Suspend/Eliminate Operations of Magistrate Circuit Courts Where The Work Can Be Performed At A Nearby Court With Significant Cost Savings	
	K. Hold Quarterly "Warrant Amnesty" Programs around the State	

I. Implement the Odyssey Case Management System in All State Courts

Appropriations of \$8 million and a filing fee increase are providing the funds to replace the 20-year-old technology in the courts' case management system with a modern, efficient system from Tyler Technologies, called Odyssey. New Mexico will be among a handful of states with Odyssey fully implemented statewide, forming an integrated and accessible case management system. The pilot phase has just ended and the project is on time and on budget. The full rollout schedule to complete the project concludes at the end of 2013.

With this summer's completion of the pilot phase of Odyssey implementation, Odyssey is implemented and operating in the district courts in the Fourth (Las Vegas/Mora/Santa Rosa), Fifth (Roswell), Seventh (Socorro/Estancia/Truth or Consequences/Reserve), and Thirteenth (Grants/Bernalillo) Judicial Districts, and in the magistrate courts in Moriarty/Estancia, Roswell, Farmington, and Grants. By the end of calendar year 2011, Odyssey will be implemented and operating in the remaining courts in the Fifth and Thirteenth Judicial Districts, and will be implemented in the First (Santa Fe/Los Alamos/Tierra Amarilla), Second (Albuquerque), and Tenth (Tucumcari/Fort Sumner/Mosquero) Judicial Districts, as well as magistrate courts in Las Cruces, Hatch, Anthony, Deming, Lordsburg, Bayard, Silver City and Truth or Consequences. At the end of 2011, more than half of all cases in New Mexico will be on the Odyssey system, and that figure will reach 100% by the end of calendar year 2013.

The Judicial Branch is restricted to this schedule by resources, especially a finite number of in-house technical experts. With more funds, we could pay Tyler Technologies personnel to assist more and implement faster. With additional FTEs, the project would be accomplished more quickly. We do not anticipate growing either resource, and with very careful management of people and funds, will execute the rollout schedule by the end of 2013.

A. Odyssey Will Make Courts More Efficient

Preliminary data strongly suggests that courts will see significant improvements in the time required for case processing with Odyssey. More time and data is required to verify our preliminary findings, but we may be able to reduce the number of personnel dedicated to case management operations in magistrate courts once Odyssey is fully implemented. Data will be tracked in magistrate courts in FY10 and FY11 to document cost savings through improved efficiencies.

We are in the early phase of measuring district court data, but I believe a similar reduction in time dedicated to case processing will be achieved in the district courts. The district courts that have been operating with Odyssey have reported improved court operations. Again, data generated in FY10 and FY11 should demonstrate improved efficiencies and cost savings in district courts.

There are a number of projects that could be undertaken to take better advantage of Odyssey and accelerate efficient court operations. I will indicate where one-time resources would make these projects possible, or accelerate their implementation.

B. Electronic Citation for Magistrate Courts

The greatest single leap in efficient operations of magistrate courts with Odyssey would be for the New Mexico Traffic Safety Bureau's (TSB) electronic citation system, called TRACS, to integrate with Odyssey. Officers are now writing electronic citations from police cars in the field, but these are converted to paper when they arrive at the magistrate courts and the Bernalillo County Metropolitan Court. The Judicial Branch has done all the necessary work to build the interface that would link Odyssey to TRACS. What remains is for TSB to acquire servers and write the minimal computer code necessary for TRACKS data to flow to the interface that the Judicial Branch has prepared for Odyssey to receive electronic citations. Once this occurs, e-citations written at a police car would automatically populate a case in the Odyssey system at a magistrate or metropolitan court, saving a substantial amount of clerk time not needed to enter the data and greatly reducing the risk of data entry errors.

Today, police officers are writing TRACS e-citations in Albuquerque and in Las Cruces, flooding the metropolitan and magistrate courts with citations that the courts must print and enter manually. If TSB will complete the bridge between Odyssey and TRACS, we will implement Odyssey in Las Cruces in 2011. Measurements of data before and after integration of e-citations with Odyssey in Las Cruces will prove that this one action will provide an extraordinary gain in quality and efficiency of our data management. The Judicial Branch, with strong support from Senator Sapien, has repeatedly met with DOT and TSB representatives, and highlighted the great importance of this project. Any efforts by legislators to encourage (or fund) TSB to complete this project will help magistrate and metropolitan courts achieve the greatest efficiencies made possible by Odyssey.

ONE-TIME FUNDS: TSB may need resources to purchase servers to complete the Odyssey-TRACKS interface. A one-time appropriation to TSB for this purpose would likely advance this project to completion.

C. Electronic Filing for District Courts

As with e-citations for magistrate courts, the greatest single leap in efficient operations of district courts with Odyssey will come from electronic filing. Civil cases, excluding domestic relations cases, are being e-filed in a pilot project now underway in the Thirteenth Judicial District (Cibola, Sandoval and Valencia Counties). As of July 1, parties in those cases are required to use and pay for e-filing. This reduces the costs of litigation to the parties and, once integrated with Odyssey, will reduce the time required for clerks to enter data into the case management system. The e-filing vendor for this project integrates documents filed electronically into Odyssey, without a clerk having to type in the relevant data.

The long-term plan is to accumulate funds from e-filing payments in civil cases so that the courts can pay for e-filing in criminal cases. The District Attorney and Public Defender would then file documents in criminal cases at no cost, while courts again gain efficiencies as clerks do not have to enter into Odyssey data from those filings.

ONE-TIME FUNDS: If funds were available to supplement the small amount of funds being generated in civil cases, and those one-time funds were dedicated to a project to e-file criminal cases in the Thirteenth Judicial District, this project would occur much sooner. Funds made available in FY12 would permit implementation of e-filing in criminal cases in FY12 in the Thirteenth Judicial District. Depending on the amount of funding made available, criminal e-filing could also occur in FY12 in other districts that have implemented Odyssey, such as the Fourth, Fifth, and Seventh Judicial Districts. One-time funding of \$500,000 would be sufficient to integrate criminal e-filing in the Thirteenth Judicial District, and perhaps other districts, during FY12.

D. Appellate Electronic Case Management

New Mexico will be the first state to implement Odyssey in appellate courts (the Court of Appeals and New Mexico Supreme Court). We are working with Tyler Technologies on development of an appellate Odyssey program. To reduce up-front costs, we are working on an enterprise model, so that after implementation in New Mexico, implementation of the developed program in other states will return revenue to us or lower ongoing costs for other Tyler products we purchase.

Appellate implementation of Odyssey should not present unusual technological challenges or require an extraordinary time commitment. However, because it will be the first, an investment of resources to develop the program is required. We are currently focused on magistrate, metropolitan and district court implementation of Odyssey by the close of 2013, after which the appellate project would be given attention. However, we do have an immediate window of opportunity with an in-house expert who could execute this project if fiscal resources were available.

ONE-TIME FUNDS: If funds were available, we could create, test and implement an appellate Odyssey case management program within twelve months. With the first appellate Odyssey program, there would be potential financial returns and this would attract significant positive attention in other states where Odyssey is being implemented but no appellate program exists. Cost estimates for this project are in development, but an informed guess is that an appellate Odyssey program could be operational in New Mexico by the end of FY12 for an investment of perhaps \$100,000.

II. Implement Electronic Payments By Credit Card And Direct Bank Transfer

A measure passed by the 2010 legislature and signed into law authorizes state agencies and the courts to implement credit card and direct bank transfer payments, as long as those who use the system are charged only the exact convenience fee imposed by the credit card processor. Courts are eager to undertake electronic payments to greatly improve collections of fines and fees and reduce the need for courts to issue arrest warrants because a defendant failed to pay.

Without credit cards, magistrate courts statewide collect more than \$16 million annually. These collections go to numerous funds, including the general fund, the court facilities fund, county detention centers, the brain injury fund, and the judicial education fund. An informed estimate of increased collections with credit cards is that collections in the magistrate courts alone would increase by about \$5 million annually.

We have undertaken a pilot project in the Clovis magistrate court to use a vendor, MSB Government Services, to process credit card payments by the Internet and by phone. We are not prepared to run a pilot that would install credit card machines, in courts, in part because most magistrate courts do not have sufficient volume to justify the significant costs, and in part to avoid actual use of credit cards in the courts. If the Clovis pilot is a success, we are likely to implement Internet and phone payments by credit card statewide through MSB or another vendor, without the necessity for clerks to handle and process credit cards.

Among the other vendors that may respond to an RFP after the pilot, Tyler Technologies is working to provide an electronic payment system that would integrate credit card payments directly into cases in the Odyssey system, eliminating the step required with MSB or another vendor – the necessity for a clerk to enter the electronic payment into the Odyssey system. Clearly, a system that credited Internet or phone payments directly into a case would provide significant efficiencies in reducing clerk data entry. In any event, the pilot and eventual spread of Internet and phone credit card payments through MSB, Tyler, or another vendor during FY11 and FY12 should dramatically improve court collections.

III. Judicial Video System Expansion Would Improve District Court Operations

The Judicial Branch operates a sophisticated, secure statewide video network. The video network, managed by only three employees at the Judicial Information Division in Santa Fe, operates in 30 counties in New Mexico. Video systems within the judicial network include 38 magistrate courts, 30 detention centers, 18 district courts and 11 municipal courts. A conservative cost benefit analysis indicates that video arraignments alone save approximately \$3.5 million dollars annually by eliminating the cost of transporting prisoners to and from courts for arraignments (analysis is based on the average between one or two transport officers per county). On a more limited basis, the video system is used in district and municipal courts in a similar fashion, with consequent savings to counties and municipalities. In addition to cost savings, conducting arraignments without moving prisoners between detention centers and the courts is a profoundly more secure means of conducting arraignments.

The Judicial Branch also uses the video network for statewide meetings and trainings, reducing court costs for travel and lost time. In FY10, the Judicial Branch estimates savings of \$170,000.00 in travel costs by conducting Judicial Branch meetings and trainings over the video network instead of assembling groups in Santa Fe or Albuquerque. This calculation does not include lost time by judicial staff when traveling long distances.

The Judicial Branch routinely receives requests from courts that are not part of the judicial network in order enhance their court processes through video arraignments, long-distance testimony, conferencing and training. In addition, state agencies continue to request use of the network and video equipment for expert witness testimony at court hearings, as well as cross-county arraignments, to name a few. These requests would further minimize costs relating to travel and security and are frequently denied because the network is operating at capacity. A small part of the capacity challenge is technical (bandwidth), but the most important resource limitation is lack of staff. Operation and maintenance of the high quality secure judicial video system is labor intensive. At least two additional video network engineers are needed to expand use of the video network. The FY10 and FY11 budget requests included these two expansion FTEs, but with no success.

The millions of dollars in documented cost savings to courts, counties and municipalities with the existing network should be sufficient testament to the great value that would be returned with an investment of less than \$200,000 for two additional video engineers. Legislative support for such a request in the FY12 budget would reflect intelligent, efficient, fiscally sound use of limited resources.

IV. Additional Efficiency Measures Contemplated Or Underway In The Courts

The Judicial Branch is constantly engaged in research, pilot projects, analysis and implementation of changed practices and policies to improve efficiency and improve the delivery of justice to the public. Here are several that are currently active.

A. Plea Cutoff Pilot Project

Bernalillo County commissioned a study of county court activities to identify ways to reduce costs. One recommendation was to institute a policy that barred prosecutors and defense attorneys from reaching a plea agreement within a certain, identified time prior to a scheduled trial. After that time, a defendant would have to plead guilty without a plea agreement or go to trial. Based on experience in other states, such a policy can result in significant saving of jury time and expense because juries are now routinely called in on the trial date only to be sent home after a last-minute plea. A plea cutoff requires parties to resolve a case before juror time and an expense are wasted, and makes a judge's calendar more predictable and thus better scheduled. A pilot project for a plea cutoff is being planned for the Second Judicial District and should be conducted and reported on in FY11.

B. Restructure Penalty Assessments; Process All Citations through Courts

The AOC is working on a legislative proposal, likely to be presented to the interim Courts, Corrections and Justice Committee, to make the penalty assessment system (traffic tickets without a jail penalty) more efficient and cost effective, by having all citations go to magistrate or metropolitan court and not MVD. This new system will remove the requirement that drivers must decide at the side of the road whether they will pay MVD or go to court, creating a safer environment for officers and reducing the amount of time it takes to issue a citation. The need for an increased number of clerks in courts throughout the state when all citations go to the courts will be funded by a proposed \$20 assessment on citations.

The Judicial Branch would also change the uniform traffic citation to improve the efficient processing of citations in courts. A mailing address would be required in addition to the address on the driver's license. All citations will go to the local court and the driver has the choice to either pay the citation or contest the ticket. If the driver does nothing within the required time frame or fails to appear, a warrant will be issued directly. In addition, other consequences will follow non-payment or failure to appear, including license suspension, and inability to obtain a license to hunt or fish.

With all citation data centralized within the courts, not inefficiently split between the courts and MVD, citation processing will be more efficient, collections will improve, and data will be more effectively available. The AOC is planning to seek support for this proposal in the FY 11 legislative session.

C. Re-Evaluate Trial De Novo Process, Particularly For DWI and Domestic Violence Misdemeanors; Consider Appeal from Magistrate Court Record Proceedings

The AOC is embarking on a study of the costs and benefits of making magistrate courts “courts of record” for DWI and domestic violence cases in the same way the Bernalillo County Metropolitan Court is a court of record for these types of cases. Currently, a person convicted of these crimes in magistrate court is entitled to a de novo trial in district court—in effect, erasing anything that happened in magistrate court and starting the case over in district court. This provides greater process and protections for a misdemeanor than a defendant would have for a felony crime.

If study shows that it would be more efficient and cost-effective, convictions in magistrate court would be reviewed on appeal by a district court judge, on a record created in magistrate court. The district court would affirm or reverse. If a retrial were needed, it would occur in the magistrate court after the district court identified any error that required a new trial. Misdemeanor trials would occur in magistrate court, not in district court. A properly conducted magistrate court trial would not be nullified by a new trial in district court, as can occur now.

D. Study Judicial Structure And Implement Cost-Saving Recommendations

The National Center for State Courts has studied, or is in the process of studying, the judicial systems in ten states (AL, FL, MN, MI, NH, IA, NE, RI, UT, VT) under an initiative “to re-engineer their court systems.” The NCSC has concluded that budgets will not soon return to “normal” and that there will be less revenue in the future. Re-engineering a court system involves evaluating and adjusting any number of court operations—from the structure of the court itself to venue requirements, to its use of technology—to improve processes and save money while increasing efficiency and maintaining service levels to the public. The New Mexico Judicial Branch is working to bring the NCSC here to study court structure and practices with the goal of re-engineering the courts to save money, increase efficiency, and maintain services. No appropriation is needed for this effort as the NCSC study would be funded by the State Justice Institute.

E. Coordinate PRC Bondsmen Data with Court Filings; Re-Examine Bond Practice

Although the PRC licenses bondsmen, there is little coordination between the PRC and courts. The AOC is working to provide the courts electronic access to PRC filings by bondsmen to address this information gap. In addition, today each county registers the authority to write bonds, but there is no coordination of bond capacity information. The AOC is trying to address this information gap as well.

Another issue with regard to bonds is that bonds appear to be frequently imposed in ways that do not relate to the constitutional and statutory purposes for which a bond is

permitted. The Judicial Branch is examining bond practices statewide and may propose reforms that make bonding practices more appropriate and efficient.

F. Implement Criminal Felony Case Settlement Weeks

Chief Justice Chávez in late 2009 instituted a week-long “settlement conference” for criminal cases in Albuquerque. Settlements are usually reached in civil cases, but this effort transferred settlement practices to criminal cases. After studying other cities where such efforts have succeeded, and despite significant skepticism, Chief Justice Chávez appointed a pro tempore judge to hold conferences aimed at resolving by plea pending criminal cases. The effort succeeded in removing a substantial number of cases from the court’s criminal docket. Given this success, a criminal felony settlement week may be attempted again if adequate pro tempore funds are available in FY11.

G. Appoint a Pro Tempore Judge to Immediately Resolve Probation Violations

Another recommendation from the study commissioned by Bernalillo County is to assign a judge exclusively to immediately hold hearings for defendants arrested for probation violations. Too often, violators are arrested and remain in the county detention center for ten days or two weeks. The frequent outcome of the violation hearing is the defendant is released on similar conditions as previously imposed. The county incurs significant costs to house the defendant as he awaits his hearing.

If pro tempore funds are available in FY11, Chief Justice Daniels could appoint a judge to hold probation violation hearings in Albuquerque, perhaps even at the detention center, to reduce the waiting time from two weeks to a few days. Although this would not save funds in the Judicial Branch, and would in fact require the expenditure of funds, the net gain to the county and the lessened waiting time in jail for defendants would be substantial. This measure remains under consideration.

H. Expand Use of Digital Recording of Court Proceedings In Place Of Making a Stenographic Record of Proceedings

The trend in many states is to reduce or eliminate employment of court reporters and instead use digital audio recordings to make the record of court proceedings. Cost savings are driving this trend. When a printed record is needed, as when a case goes to an appellate court, a contractor is hired to type the written record from the audio recording. Trained monitors of the digital audio recording system are employed at a far lower cost than court reporters who create a stenographic record. The cost to have a contractor type a written record from the audio recording is usually less than the cost (\$2.50 per page) for a typed stenographic transcript.

New Mexico has a long history of using recorded hearings as the official record instead of stenographic records from court reporters for many types of cases in many courts. The

Judicial Branch currently employs 43 court reporters and more than 300 court monitors. The Judicial Branch has made a substantial investment in digital audio recording technology and it is used part-time or full-time in most magistrate courts, the Bernalillo County Metropolitan Court, and every district court. The Supreme Court is considering changes to court rules that would further liberalize the use of digital audio technology in courts. There exists adequate funding to support the technology, but a reliable source of funding to pay contractors to create printed records from audio recordings for appellate cases needs to be identified. The AOC plans to present to the Courts, Corrections and Justice Interim Committee a legislative proposal to provide a non-general fund revenue stream to pay for appellate transcripts.

I. Preserve Cost-Saving Problem-Solving (Drug) Courts

A 2009 study by the University of New Mexico, commissioned by the New Mexico Sentencing Commission with funds appropriated by the Legislature, examined numerous aspects of the DWI Drug Court at the Bernalillo County Metropolitan Court. In addition to finding the DWI Drug Court efficacious for reducing recidivism, the study concluded the cost of the program was about one-third the cost of defendants placed on probation. Those on probation tended to move in and out of the criminal justice system for repeated violations of probation, getting arrested on warrants and spending time in the county detention center at a rate that drove the cost of probation well above the cost of treatment in the DWI Drug Court.

This study is now in Phase II, funded by the AOC, to compare the efficacy and costs of the DWI Drug Court with a non-drug court program run by Sandoval County. In addition, the AOC is funding an expansion of the study to examine data over five years instead of three years, as was the case in the original study. It is likely that Phase II will confirm what Phase I concluded; program graduates not only gain sobriety and avoid repeat offenses at a much better rate than those outside the program, the cost of the program is measurably lower than “business as usual” incarceration and probation.

The Judicial Branch is pursuing all available measures to keep problem-solving courts (DWI and other drug courts, mental health courts, family reunification courts) operating in a time when general fund cuts to court budgets demand drastic reductions to or elimination of problem-solving courts. These court programs provide an avenue to treatment that may be the only opportunity some participants have to address addictions that leads them to criminal activity. These programs reduce government spending in the courts and in detention centers, and also in improve the productivity of graduates. Federal grants and the support provided by the liquor excise tax fund in FY11 will help keep some of these programs from closing. We are operating on a thin margin in many programs, at a level barely sufficient to sustain the programs’ viability. Further cuts to court appropriations in FY11 or in the FY12 budgets endanger the survival of these effective, cost-saving programs.

J. Reduce Jury & Witness Fund Expenditures

In response to chronic shortages in the funds available in the Jury & Witness Fund, the courts have looked very closely at improved efficiencies. In 2009, when the Legislature authorized increased mileage reimbursement rates and higher rates were adopted by the Executive Branch, the Supreme Court issued an order to retain the mileage reimbursement rate at 32 cents, a savings of more than \$600,000 in payments from the Fund. A national expert on efficient jury management recommended changes to the jury orientation practices that New Mexico courts adopted, reducing expenditures and improving the jury experience for citizens. There is now a project underway to allow jurors to view the jury orientation video on-line and certify they have done so, saving time in court and reducing juror payments. An audit of expenditures for juror refreshments revealed excessive spending. Changes adopted in 2009 reduce payments for these expenses by one-half during FY10.

Despite these efforts, the AOC again had to borrow funds to make juror payments in May and June 2010. New Mexico continues to pay jurors the highest rate of compensation of any state. Legislation to reduce juror pay to \$5 per hour was voted down in the Senate Judiciary Committee in 2009 and did not fare better in the 2010 legislative session. The AOC may again propose that juror pay be set at \$5 per hour. It is not clear if that proposal will win support in the Unified Budget or, if it does, whether any legislator will sponsor the legislation.

K. Suspend/Eliminate Operations of Magistrate Circuit Courts Where The Work Can Be Performed At A Nearby Court With Significant Cost Savings

Legislation passed in the 2009 session eliminated a magistrate court in Tatum, New Mexico, which processed less than 50 cases per year. With strong support from the Judicial Branch, the Legislature in the 2010 session created a sixth magistrate judgeship in Dona Ana County, where the caseload demonstrates a need for nine magistrates. The closing of the Tatum court as of December 31, 2010, means that the new Las Cruces judgeship will be at no increased cost.

In the 2009 session, the Legislature converted a magistrate court in Thoreau to a circuit court, transferring the existing judgeship to Gallup. This action significantly strengthened the ability of the Gallup court to process its existing caseload, and resulted in a modest savings on the Thoreau facility. Additional savings were gained by legislation that closed the Vaughn magistrate circuit court, with cases being sent to Santa Rosa. Legislation also closed the Cimarron and San Jon magistrate circuit courts, with cases going to nearby magistrate courts and savings on closed facilities.

The Judicial Branch is further examining the closing, as a measure compelled by fiscal emergency, of other magistrate circuit courts to save on facility lease costs. Any savings from facility closings would be directly used to reduce employee furloughs.

L. Hold Quarterly "Warrant Amnesty" Programs Around The State

The Warrant Enforcement Unit of the AOC's Magistrate Court Division coordinated, with federal authorities, the state's first "Safe Surrender" program in Las Cruces in August. More than 1100 people with outstanding warrants appeared to resolve outstanding court issues. Persons participating in the warrant amnesty program were not arrested and made payments of fines and fees owed to the state exceeding \$90,000. There are tens of thousand of warrants outstanding in New Mexico for people who either failed to appear for court cases or failed to pay fines and fees. Regular, quarterly operation of a Safe Surrender program in different areas of the state could help people avoid arrest and result in collections of many fines and fees owed to the state.

Legislative Initiatives for the Judiciary

1. Judge in the Eighth Judicial District Court	Add one judge and staff to the Eighth Judicial District.
2. Ninth Judicial District Court	Currently, the Roosevelt County Judge is from division three. The proposed change would allow the judge to be from any division.
3. Bernalillo County Metropolitan Court (BCMC) - Enhanced background investigations	<p>Background Investigations Expansion Request – 5 FTE \$284.5</p> <ul style="list-style-type: none"> • Additional staff is required to provide Judges with a defendant's complete criminal history prior to setting conditions of release and bond. • This request was approved in FY08, FY09, FY10 and FY11 by the Judicial Budget Committee and the Court, Corrections and Justice Committee.
4. Metropolitan Court Judge Eligibility	Amend NMSA 34-8A-4 to require that the requisite three years of prior in state legal practice have occurred in the years immediately preceding the assumption of office. This change would make the statutory requirements regarding eligibility for election or appointment to the office of Metropolitan Court Judge consistent with the constitutional requirements for Justices of the Supreme Court and Judges of the Court of Appeals and District Courts.
5. Permit Magistrate Courts and BCMC to charge offenders for collection costs	<p>Over the last three years, BCMC spent the following amounts in collections costs:</p> <p>FY08 \$80,433.78 FY09 \$60,505.00 FY10 \$71,742.60</p> <p>This amendment would allow BCMC and magistrate courts to pass through collection costs to the offender.</p>
6. Penalty assessment citation reform	AOC proposes a bill to amend the Traffic Code in several ways. The broader changes would include elimination of the "roadside plea" in traffic cases, and instead provide for all traffic citations to go to the local Magistrate Court. This would include citations that now are going to MVD. MVD only needs traffic citation data, which we provide already, and MVD has no incentive or mechanism to actively collect fines and fees. To address the additional citation processing that will occur in the Magistrate Courts, there would be a new citation fee to fund additional positions. To aid with enforcement and accountability, the amendments would change the citation into a summons so that failure to appear or pay by a date certain will allow for an automatic warrant. The amendments would also provide for suspension of other privileges like hunting and professional licenses. In addition, we propose to cleanup provisions identified as problematic by the Magistrate and Metropolitan Courts, such as the suspended/revoked statutes. This will be as complete a cleanup as possible, but will not have an overall "theme" like the changes to the citation system described above.

Legislative Initiatives for the Judiciary

7. Resolution to amend the Constitution on the timing for election of judges appointed to the bench	Amend Article IV, Section 22 of the New Mexico Constitution to require that a judge appointed through the judicial nominating process by the governor serve until the next general election following at least one full year of service on the bench.
8. 40-12-5.1. Background Checks in Safe Exchange and Supervised Visitation (SE/SV) Program	The bill would amend Chapter 40-2-5.1 (NMSA 1978), to add a new Subsection D requiring that before performing services, individuals would be subject to a background check conducted by CYFD, including fingerprints, national criminal history checks, and abuse/neglect screens.
9. Amending the 'return to work' allowing an exception for court security officers	Allow former police officers to serve as court security officers at modest pay while still collecting pension benefits.
10. Reducing jury pay to \$5 an hour.	Reduce costs to the Jury and Witness Fund by \$1 million annually by reducing juror pay.
UNDER CONSIDERATION	
11. Close Anthony and Questa circuit courts	Both courts are about 25 miles from the "home" magistrate courts. Anthony is opening a municipal court that should reduce traffic citations to the circuit court and, due to vacancies, only 1 current employee would have to change work locations to work in Las Cruces. Only 1 employee would have to change job locations from Questa to Taos. Both circuit courts are about 27 miles from the home court. Savings would be \$80,000 in Anthony and \$20,000 in Questa. The savings equate to about 14 hours of furloughs in the magistrate courts.
12. Amend Magistrate Qualifications Statute	If the census shows a county has a population of more than 200,000, any magistrate elected in that county must be an attorney. NMSA 1978, Section 35-2-1. When the census figures are released in 2011, it is likely population of Dona Ana County will exceed 200,000, so that magistrates elected in the 2014 elections, and any appointed to fill vacant positions before that elections, would have to be attorneys. Proposed legislation would eliminate the attorney requirement or raise the population figure.
13. Increase Temporary \$4 Magistrate Court Operations Fee	The fee is collected in cases covered by Section 66-8-116.3, which are almost exclusively penalty assessments paid to MVD. At \$4.00, the fee is expected to generate about \$600,000 for magistrate court operations in FY11 – FY14. If the fee were increased to \$7, the amount collected would be \$1 million. After the "shave" in the GAA (more than \$200,000 from the magistrate budget) and the 3.2% reduction on September 1 (\$743,200), the magistrate courts are facing a furlough of about 30 hours, even with judges participating along with employees, and with the \$4 fee. An increase to \$7 would significantly decrease or eliminate magistrate court furloughs.

